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Gelita USA Inc. *and* United Food and Commercial Workers International Union, Local 1142. Cases 18–CA–18406 and 18–RC–17500

April 30, 2008

DECISION, ORDER, AND DIRECTION[1]

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

This case involves several unfair labor practices that the Respondent, Gelita USA Inc. (Gelita), is alleged to have committed during a union organizing campaign among its laboratory employees in the spring of 2007. As explained below, we agree with the judge that Gelita violated Section 8(a)(1) of the Act by promising benefits to unit employees, interrogating two employees about their union sympathies, and telling employees that, in the event of an economic strike, they would have no job protection if replaced. We also agree with the judge, for the reasons stated in his decision, that Gelita violated Section 8(a)(3) by accelerating the termination of Heidi Young[2] and that Young was an eligible voter whose ballot should be opened and counted.[3]

1. We concur with the judge's finding that, under the facts presented here, Supervisor Dean Wood unlawfully promised a benefit to employees by indicating that he was going to remedy a staffing problem in the laboratory. During a meeting with employees on the day before the election, Wood stated that he knew the laboratory was understaffed, and that his first goal would be to get the lab staffed because there was a lot of work and not a lot of people. Wood made this statement in conjunction with a request to employees to reject the Union, and there is no evidence that Gelita had been planning to remedy the understaffing irrespective of the Union's campaign. In these circumstances, we find that Wood's statement could reasonably be construed by employees as a promise of a benefit in exchange for rejecting representation by the Union.

Gelita argues that Wood's statement did not constitute a promise of a benefit because there is no evidence that employees had complained about the staffing levels in the laboratory, and therefore there was no employee complaint to remedy. We find no merit in this argument. Although the record contains no specific employee complaints, it is apparent from Wood's comments that understaffing in the laboratory was a problem that directly affected employees, and that Gelita was aware of the problem. Moreover, it is not critical that the employees themselves had not complained about the staffing; the question here is whether Wood promised employees a benefit in exchange for rejecting the Union. See *DynCorp,* 343 NLRB 1197, 1198 (2004) (judge erred in requiring the General Counsel to prove that promise of benefits involved matters with which employees had "problems").

2. In adopting the judge's finding that Human Resources Consultant Kim Dellinger unlawfully interrogated employees Heidi Young and Vicki Claassen, we reject Gelita's contention that the exchange between Dellinger and the employees was a casual conversation among persons who were friendly to each other. There is no evidence that Dellinger had a friendly relationship with either Young or Claassen, or that the employees had been willing to talk to Dellinger about their union sympathies. Rather, the evidence indicates that both Young and Claassen were reluctant to talk about the Union, giving vague responses to Dellinger's inquiries and refusing to make eye contact with her. Further, Dellinger testified that she did not know Young personally, but only as an employee of the company. Accordingly, we find no merit in the Respondent's contention.

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[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] In determining that the Respondent violated Sec. 8(a)(3), the judge found that the General Counsel established that Young's union activity was a motivating factor in Respondent's acceleration of her termination date, as shown by: (1) Young's union activity; (2) Respondent's knowledge of that activity; (3) Respondent's antiunion animus; and (4) a causal connection between that animus and the accelerated termination date. Although Board cases typically do not include (4) as an independent element (see, e.g., *Consolidated Bus Transit*, *Inc.*, 350 NLRB No. 82, slip op. at 2–3 (2007)), because *Wright Line,* 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982)), is a causation analysis, Chairman Schaumber agrees with its addition to the formulation. See, e.g., *Shearer's Foods*, 340 NLRB 1093, 1094 fn. 4 (2003).

[3] On December 21, 2007, Administrative Law Judge William N. Cates issued the attached decision. Gelita filed exceptions and a supporting brief, and the Union filed an answering brief.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

Gelita has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products,* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

3. As stated above, we agree with the judge that Gelita unlawfully told employees that economic strikers would have no job protection if replaced. *River's Bend Health & Rehabilitation Services,* 350 NLRB No. 16 (2007), cited by Gelita in exceptions, is distinguishable from the present case. In *River's Bend*, the Board found that the employer did not violate the Act by telling employees that the hiring of strike replacements "puts each striker's continued job status in jeopardy," because the statement was entirely consistent with the law describing the rights of strikers as set forth in *Laidlaw Corp.*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969). See *River's Bend,* 350 NLRB No. 16, slip op. at 2. In contrast, the statement at issue here, that strikers would have "no job protection if replaced," is an incorrect statement of law, because economic strikers have certain reinstatement rights pursuant to *Laidlaw.*[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Gelita USA Inc., Sergeant Bluff, Iowa, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

It is further ordered that Case 18–RC–17500 be severed from Case 18–CA–18406 and remanded to the Regional Director for Region 18 for action consistent with the Direction below.

DIRECTION

IT IS DIRECTED that the Regional Director for Region 18 shall, within 14 days from the date of this decision, open and count the ballot of Heidi Young, and then prepare and serve on the parties a revised tally.

If the revised tally reveals that the Petitioner has received a majority of the valid ballots cast, the Regional Director shall issue a certification of representative. If however, the revised tally shows that the Petitioner has not received a majority of the valid ballots cast, the election must be set aside and a new election held at such time as the Regional Director deems appropriate.

Dated, Washington, D.C. April 30, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] Member Liebman did not participate in *River's Bend* and expresses no view as to whether it was correctly decided. She agrees, however, that it is distinguishable from this case.

Florence I. Brammer, Esq., for the Government.[1]
Eric W. Tiritilli, Esq., for the Company.[2]
Jay M. Smith, Esq., for the Union.[3]

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This unfair labor practice case involves interference with employee rights and an acceleration of the designated resignation date of an employee from June 6, 2007 to May 27, 2007. The Representation case involves Objections filed by the Union/Petitioner on June 6, 2007, to conduct affecting the results of a National Labor Relations Board (Board) conducted election[4] held on May 31, 2007, among certain employees[5] of the Company/Employer at its Sergeant Bluff, Iowa location. The Representation case also involves the single challenged ballot of Heidi Young[6] which is sufficient to affect the results[7] of the election. Young's ballot was challenged by the Board Agent conducting the election because the Employer contended she was not employed by the Employer on May 31, 2007, the date of the election. The Petitioner contends Young was eligible to vote because she would have been employed by the Employer on May 31, 2007, but for the Employer's acceleration of her voluntary termination, which was to have been effective on June 6, 2007.

On August 22, 2007, the Regional Director for Region 18 of the Board issued a Report on Challenged Ballot and Objections, Order Directing Hearing, Order Consolidating Cases, and Notice of Hearing. The Regional Director noted the acceleration of Young's termination is the subject of an unfair labor practice allegation in the unfair labor practice case and other of Petitioner's objections are co-extensive with certain other unfair labor practice allegations set forth in the unfair labor practice complaint. Accordingly, the Regional Director ordered the cases consolidated for trial. I heard these cases in trial in Sioux City, Iowa, on October 11, 2007.

The unfair labor practice case originates from a charge, filed by United Food and Commercial Workers International Union, Local 1142 (the Union) on June 12, 2007, and amended on August 20, 2007, against Gelita USA Inc. (the Company). The prosecution of this case was formalized on August 21, 2007,

[1] I shall refer to counsel for the General Counsel as counsel for the Government or Government.

[2] I shall refer to counsel for the Company/Employer as counsel for the Company or Company.

[3] I shall refer to counsel for the Charging Party/Petitioner as counsel for the Union or the Union.

[4] The election was held pursuant to a Stipulated Election Agreement approved on May 9, 2007, by the Regional Director for Region 18 of the Board.

[5] The stipulated unit is as follows: "All full-time and regular part-time Quality Assurance/Quality Control laboratory employees, including the QA/QC Assistant assigned to the Quality Assurance/Quality Control Laboratory Department at the Employer's 2445 Port Neal Industrial Road, Sergeant Bluff, Iowa facility, excluding management employees, and guards and supervisors as defined in the Act.

[6] Heidi Young is the employee whose resignation was accelerated, allegedly, for unlawful reasons.

[7] Six votes were cast for the Petitioner and six votes against the Petitioner with the one challenged ballot that of Heidi Young.

when the Regional Director for Region 18 of the Board, acting in the name of the Board's General Counsel, issued a complaint and notice of hearing (complaint) against the Company.

The complaint, as amended, alleges the Company, during the month of May 2007, interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act (the Act) thus violating Section 8(a)(1) of the Act. Specifically, it is alleged the Company violated Section 8(a)(1) of the Act, during the specified time, by its supervisors and/or agents, interrogating employees regarding how they intended to vote in the upcoming union election; promising employees it would be able to resolve any problems the employees had with their current working conditions if they abandoned their pursuit of Union representation; and, in a posted notice to its laboratory employees threatened they would receive no job protection if they engaged in an economic strike on behalf of the Union should the employees select the Union to represent them. It is also specifically alleged the Company violated Section 8(a)(3) and (1) of the Act by on or about May 27, 2007, accelerating the termination of employee Heidi Young (Young), who had given notice of her intent to resign her employment with the Company effective June 6, 2007.

The Company, in a timely filed answer to the complaint, denied having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified. I have studied the whole record, the post trial briefs, and the authorities cited therein. Based on more detailed findings and analysis below, I conclude and find the Company violated the Act substantially as alleged in the complaint.

FINDINGS OF FACT

I. JURISDICTION, LABOR ORGANIZATION STATUS, AND SUPERVISOR/AGENCY STATUS

The Company is a Delaware corporation with an office and place of business in Sergeant Bluff, Iowa, where it is, and has been, engaged in the manufacturing of gelatin products. During the 12 months ending August 21, 2007, a representative period, the Company purchased and received at its Sergeant Bluff, Iowa, location goods and materials valued in excess of $50,000 directly from points outside the State of Iowa. The evidence establishes, the parties admit, and I find, the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties admit, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act.

It is admitted that Company Managing Director Rob Mayberry (Director Mayberry), Human Resources Vice President Jeff Tolsma (VP Tolsma), Human Resources Consultant Kim Dellinger (Consultant Dellinger) and Laboratory Manager Dean Wood (Supervisor Wood) are supervisors and agents of the Company within the meaning of Section 2(11) and (13) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Company is a German-owned worldwide organization. The only facility involved herein is the Sergeant Bluff, Iowa location. The Company manufactures gelatin primarily for the pharmaceutical and photographic industries with some production for smaller "niche type" industries. The gelatin manufactured at the Company is from cattle bones and porcine or pig skins. The Company's product goes to its customers basically as a raw material in granular form. The pharmaceutical industries utilize the granular gelatin to manufacture medical capsules and the photographic industries utilize the gelatin in the processing of film. The Company's 200 plus production and maintenance employees at its Iowa location are represented by the Union. It is the approximately 13 Iowa laboratory employees that we are concerned with here and those employees engaged in an organizing campaign at the Company in May 2007. There are two testing areas in the laboratory department namely the microbiological and physical testing areas. There are some additional testing areas such as a chemical testing area. The microbiological, physical and chemical testing by the laboratory employees is to ensure the quality of the properties that comprise the gelatin and to determine how the gelatin can be used in customer mixes which is the final product.

Laboratory Technician Desiree McCaslen (McCaslen) and a coworker contacted a representative of the Union in late March or early April 2007, about setting up a meeting to address issues and concerns among the laboratory employees. An initial "meet and greet" session with a Union representative was thereafter arranged. Prior to the first meeting McCaslen and others handed out flyers to all laboratory employees announcing the meeting. Two or three meetings followed the initial meeting which culminated in the Board conducted election of May 31, 2007. McCaslen served as an observer for the Union at the election.

B. The Posted Notice

1. Complaint allegation

It is alleged at paragraph 5(a) of the complaint that during the month of May 2007, the Company in a posted notice in the laboratory department, threatened employees they would receive no job protection if they engaged in an economic strike on behalf of the Union, should employees select the Union to represent them.

a. Notice language

The Notice posted in the laboratory reads;

> IF THE UNION GETS IN and CALLS A STRIKE what would you and your family do if you were faced with bills incurred during a strike!
>
> Economic Strikers Get. . . .
>
> NO pay checks
>
> NO unemployment compensation
>
> NO job protection if replaced
>
> <u>Vote NO Union</u>

It is the "No job protection if replaced" portion of the notice that the Government alleges is an inaccurate statement of the law and violates the Act.

Laboratory technicians Vicki Claassen (Claassen) and McCaslen testified the notice was posted in the laboratory in May 2007, with Claassen specifying it was posted on "our dry erase board in the hall, in the walkway of the lab right when you walk in." Other flyers addressing strikes were also posted along with the above notice.

b. Company's evidence on the notice

The Company acknowledges it placed a one-page poster in the laboratory area entitled, "If the Union Gets in and Calls a Strike" for 1 or 2 days in May 2007. Vice President Tolsma testified he gave a Power Point presentation to the laboratory employees on May 22, 2007, titled "Strike Information." The Power Point presentation, which Tolsma did not stray from, discussed, among other things; how strikes came about; how strikes hurt everyone; how employees on strike do not get paid by the Company; how economic strikers could be replaced; how if a strike succeeded and damaged the Company some employees may lose their jobs anyway; how the Union might pay strikers but the amount might be less than employees needed; how employees could work even during a strike; that there are economic strikes and unfair labor practice strikes; and, how an employer may operate during a strike.

2. Discussion and conclusions regarding the notice

It is undisputed the Company posted a notice in a prominent place in its laboratory department for a day or so in May 2007, that stated in part; "Economic Strikers Get . . . No job protection if replaced." The Government argues this posting, on its face, unlawfully conveys to employees the threatening message that should they select union representation, and should that representation lead to an economic strike, they would have "No job protection if replaced." The Government acknowledges that an employer, such as the Company herein, may address the subject of striker replacement of economic strikers without fully detailing their protected rights so long as the employer does not threaten that as a result of a strike employees will be deprived of their rights in a manner inconsistent with established Board law. The Government contends the Company has stepped outside what it may lawfully say and made an unlawful threat herein.

The Company contends the permissibility of its assertion in the posted notice is supported by longstanding Board precedent. The Company asserts it does not violate the Act by truthfully informing employees they are subject to permanent replacement in the event of an economic strike. The Company further asserts it is not required to fully detail the protections an economic striker may have when addressing striker replacements so long as it does not threaten that as a result of a strike employees will be deprived of their rights in a manner inconsistent with Board law. The Company argues no such unlawful statements were set forth in the posting at issue.

Section 8(c) of the Act permits an employer to make predictions regarding the consequences of union representation, including strikes, provided its remarks are not accompanied by a threat of reprisal or force or promise of benefit. *Eagle Comtronics, Inc.*, 263 NLRB 515 (1982), is the leading case defining the extent of an employer's obligation, on informing employees of the consequences of an economic strike, that may result in their being replaced or incurring other hardships. Stated differently, the Board in *Eagle Comtronics, Inc.*, considered the extent of an employer's obligation (on informing employees that they may be permanently replaced or suffer other consequences in an economic strike) to provide an accurate picture of employee rights under Laidlaw.[8] In *Eagle Comtronics, Inc.,* supra at 515–516, the Board held:

> The issue posed in this case is the degree of detail required of an employer who informs employees that they are subject to replacement in the event of an economic strike. It is well established that, when employees engage in an economic strike, they may be permanently replaced.[5] Of course, 'permanent replacement' does not mean that a striking employee is deprived of all rights. Specifically, striking employees retain the right to make unconditional offers of reinstatement, to be reinstated upon such offers if positions are available, and to be placed on a preferential hiring list upon such offers if positions are not available at the time of the offer.[6] However, the Board has long held that an employer does not violate the Act by truthfully informing employees that they are subject to permanent replacement in the event of an economic strike. The Board has held that such comments do *not* constitute impermissible threats under Section 8(a)(1), or objectionable conduct in an election.[7] Unless the statement may be fairly understood as a threat of reprisal against employees or is explicitly coupled with such threats, it is protected by Section 8(c) of the Act. Therefore, we conclude that an employer may address the subject of striker replacement without fully detailing the protections enumerated in *Laidlaw*, so long as it does not threaten that, as a result of a strike, employees will be deprived of their rights in a manner inconsistent with those detailed in *Laidlaw*. To hold otherwise would place an unwarranted burden on an employer to explicate all the possible consequences of being an economic striker. This we shall not do. As long as an employer's statements on job status after a strike are consistent with the law, they cannot be characterized as restraining or coercing employees in the exercise of their rights under the Act.[8] [Footnotes omitted.]

The Board in *Unifirst Corp.*, 335 NLRB 706 (2001), further discussed an employer's rights (free speech) and its obligation to present accurate, though not complete, information when addressing the rights of economic strikers by stating "an employer may, for example, inform employees that they 'could' be permanently replaced, without telling them that they would retain employment rights." The Board in *Unifirst Corp.* went on to note:

> Further, *Eagle Comtronics* by its own terms applies to statements that are unaccompanied by threats.[5] The decision articulates the Board's policy of resolving in the em-

[8] *Laidlaw Corp.*, 171 NLRB 1366 (1969), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970).

> ployer's favor any ambiguity occasioned by a failure to articulate employees' continued employment rights when informing them about permanent replacement in the context of an economic strike. Where, however, ambiguous comments about striker replacement are part and parcel of a threat of retaliation for choosing union representation. . . . any ambiguity should be resolved against the employer. [Footnotes and citation omitted.]

So long as an employer's statements on job status after an economic strike are consistent with the law, even thought all rights are not fully explained, such statements are permissible and do not violate the Act. *River's Bend Health & Rehabilitation Services*, 350 NLRB No. 16 (2007).

I find, in agreement with the Government, the Company's statement that if the employees selected union representation which led to an economic strike they would have "NO job protection if replaced" cannot be reconciled with the employees' rights under *Laidlaw*. There is no question but that the Company may address economic strikes and striker replacement without outlining in detail each and every right an economic a striker may have, but it may not, as is the case here, threaten they have "no" job protection if replaced. Employees would have, for example, preferential recall, rehire and reinstatement rights which certainly constitutes some job "protection." The Company's poster clearly conveys to the ordinary employee that if he or she engages in an economic strike and is replaced the employee has no job protection whatsoever. Accordingly, I find the Company threatened employees they would receive no job protection if they engaged in an economic strike in violation Section 8(a)(1) of the Act.

I reject the Company's contention that because the poster in question was just one of many it provided concerning economic strikes and striker rights that overall the Company conveyed accurate information to its employees regarding economic strikes. While there is no contention that other of the Company's postings or Vice President Tolsma's Power Point presentation on strikes exceeded the bounds of the permissible such does not somehow negate the threat contained in the posting at issue.

C. The Interrogation

1. Complaint allegation

It is alleged at paragraph 5(b) of the complaint that on or about May 22, 2007, Company Consultant Dellinger, interrogated employees regarding how they intended to vote in the upcoming Union election.

a. The Government's evidence regarding the interrogation

Employee Young testified that on May 22, 2007, Consultant Dellinger came into the microbiology laboratory around 3 p.m. where she and co-worker Claassen were. According to Young, Dellinger asked "how we were doing with all this stuff." Young responded it really wasn't any concern to her. Young said Consultant Dellinger commented "Well, you have friends here that you care about." Young acknowledged she did and said "Yes, so obviously I will vote how they want me to vote." Young testified that as Dellinger left the room she commented people could not even look her in the eye anymore.

Claassen recalled Dellinger asking she and Young "do you guys have your minds made up about this?" Claassen responded she was unsure. Claassen testified she assumed what Dellinger meant by her question so she told Dellinger she was "taking all the information in right now." Claassen testified Young said the results would not affect her since she would not be there so she would just vote as her friends wanted her to.

b. Company's evidence regarding the interrogation

Consultant Dellinger said she visited the laboratory on a daily basis in the month of May 2007. She did so to answer any questions the employees might have, explaining, "if they had any questions about what was going on, that we could address those right away." On her May 22, 2007 visit, she spoke with employees Young and Claassen. Dellinger could not recall exactly what was said but added she was "uncomfortable" on that occasion because it was "really the first that I'd been in to have a direct conversation with a person in the lab and could not gain eye contact." Dellinger denied asking any employee how they may vote in the union election. Dellinger explained she had over 20-years experience in human relations and was very careful when she spoke with employees and followed written advice from the Company's lawyers. Dellinger further explained she had been involved in other union type activities and knew that in her position she had to be very careful what she said to employees. Dellinger said that on one occasion in the laboratory she told a laboratory employee she could not ask how the employee was going to vote and did not want to know but she needed to make sure all questions of the employees had been answered.

2. Discussion and conclusions

I credit the essentially mutually corroborative testimony of Young and Claassen regarding the May 22, 2007 meeting, which Dellinger acknowledged, including the fact the employees would not make eye contact with her making her uncomfortable. I am also mindful Dellinger could not recall specifics of her exchange with the employees on the occasion. I find Dellinger inquired of Young and Claassen how they were doing with all this stuff and if they had their minds made up about this.

The Company contends Dellinger's inquiry, even if made, was nothing more than communication protected by Section 8(c) of the Act. The Company contends neither the words themselves nor the context in which they were uttered suggest an element of coercion or interference. Simply stated the Company asserts the Section 8(c) protected and uncoercive comments of Dellinger, as attributed to her by Young and Claassen, can not constitute an unfair labor practice.

The Government, on the other hand, argues that asking employees if they have their minds made up may appear on the surface to be less intrusive than asking them how they are going to vote, but, that the net intent and effect are the same. The Government asserts the overall circumstances herein makes clear the questioning by Dellinger, as credited above, tends to restrain, coerce and/or interfere with employees' rights guaranteed by the Act.

I note certain guiding principles before I address this allegation of interrogation. Interrogation is not, by itself, a per se

violation of Section 8(a)(1) of the Act. The test for determining the legality of employee interrogation regarding union sympathies is whether under all the circumstances the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed employees by the Act. Under this totality of circumstances approach consideration is given to; whether the interrogated employee is an open or active supporter of the union, the background surrounding the interrogation, the nature and purpose of the information sought, the identity of the questioner, the place and/or method of the interrogation, and the truthfulness of any reply by the questioned employee. *Rossmore House*, 269 NLRB 1176, 1177 (1984), enfd. sub. nom. *H.E.R.E Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). The above factors are not to be mechanically applied but rather are to be useful indicia that serve as a starting point for assessing the totality of the circumstances. That the interrogation might be courteous and low keyed instead of boisterous, rude, and profane does not alter the case.

I am fully persuaded Dellinger's questioning of Young and Claassen on May 22, 2007, constituted unlawful interrogation that tended to restrain, coerce and interfere with the employees' protected rights. It is clear Dellinger's questions concerned the Union when she asked about all this "stuff" and if they had their minds made up. Dellinger went to the laboratory daily during the month of May when the Union campaign was going on. She went to specifically address questions the employees might have regarding the union organizing of the laboratory employees. On the May 22, 2007, occasion she asked questions rather then answering them. That Dellinger's inquiry involved the Union is clear. When Dellinger reminded Young she had friends at the Company she cared about and Young responded she did and would vote as they wanted her to vote made clear the inquiry was really about the Union. Dellinger did not correct, object to, or protest Young's response that indicated the "stuff" and having their "minds made up" referred to the Union. When Young responded that it really did not concern her, Dellinger did not let it rest there but rather pursued it further reminding Young she had friends there she cared about trying to get Young to be more responsive about her and her co-workers union sympathies. Dellinger, a high management official with the Company, advanced no legitimate reason for her inquiries. Under all the circumstances, and as stated earlier, I am fully persuaded Dellinger's inquiries reasonably tended to restrain and coerce employees and as such violates Section 8(a)(1) of the Act and I so find.

D. May 30 Meeting Conducted by Supervisor Wood

1. Complaint allegation

It is alleged at paragraph 5(c) of the complaint that on May 30, 2007, during a meeting with laboratory employees, Supervisor Wood, promised employees the Company would be able to resolve any problems employees had with their current working conditions if they abandoned their pursuit of Union representation.

a. Government's evidence regarding the meeting

Laboratory Technicians Claassen and McCaslen were present at and testified regarding the May 30 laboratory employee meeting conducted by Supervisor Wood. According to Claassen, Wood first explained the laboratory was understaffed and his first goal would be to have it fully staffed. Second, Wood explained that with the change in supervision in the laboratory department the employees had not had a chance to know or observe his supervisory skills or procedures. Claassen said Supervisor Wood asked the employees to give him 6 months and if after 6 months they were not satisfied with the way things were going "then [they] could go back to the Union."

McCaslen testified it was the first time an immediate level supervisor had sat down with the employees "and explained the economic hardships the Company was going through with the change in the market." McCaslen further testified:

> He explained; you know, that the Company was trying and that they were making changes by moving him into the lab, and that he felt he could do an adequate job of making these changes if we gave him more time, because, at that time he'd only been in there a few weeks and again expressed his concerns that he felt we should hold off on the union election. I think he asked for maybe like a six month time frame.

b. Company's evidence on the meeting

Supervisor Wood testified that when he spoke with the laboratory employees on May 30, 2007, he simply wanted to explain to them what was going to happen the next day at the union election. Wood testified, "I wanted everyone to be clear and understand what the process was and how it was actually going to physically work." Wood said he also spoke about his being placed in the laboratory and told the laboratory employees about the economic conditions at the Company as he understood them. Wood said those were the "main points" of his speech. Wood specifically denied telling the employees they would be able to resolve any problems they had with their current working conditions if they abandoned their pursuit of union representation. According to Wood 11 or 12 of the laboratory technicians were present for the meeting. Wood utilized "bullet point" type notes in giving his talk to the employees. Wood could not recall if staffing levels came up in the meeting but acknowledged getting proper coverage in the laboratory had been a problem for him.

2. Discussion and conclusions

I credit Claassen's and McCaslen's testimony regarding the May 30, 2007, laboratory employee meeting conducted by Supervisor Wood. I do so for a number of reasons. First, they both appeared to be telling the truth as best they could recall. Second, their testimony was essentially the same. Third, Supervisor Wood, while unable to remember if staffing was mentioned in the meeting clearly recalled staffing was a major concern for him during the short time he had been in charge of the laboratory. In light of the fact staffing was of such concern for Wood, it is highly likely he discussed it at the meeting as testified to by Claassen. Fourth, Wood did not deny the specific comments about the meeting that Claassen and McCaslen attributed to him.

The Government contends Supervisor Wood's comments violate the Act because he unlawfully promised to resolve the

employees current working conditions if the employees abandoned their pursuit of union representation. The Company contends the comments, even if made by Wood, were simply generalized expressions asking for "more time" or "another chance" and were within the limits of permissible campaign propaganda.

Generalized expressions by employers are legally permissible in union campaigns. The Board in *National Micronectics*, 277 NLRB 993 (1985) found no violation of the Act where the employer confessed it had neglected matters in the past and asked for a second change to make things better. The Board held such to be generalized expressions ("another chance" "more time") and permissible. In *Noah's New York Bagels*, 324 NLRB 266 (1997), the Board found no violation where the employer's president, in part, in a speech one day before an election, said the employer had "rapid growth" and "clearly made . . . mistakes" but suggested "the best way to overcome our mistakes is for us to work together, without the intervention of a third party . . . please vote to give us a second chance to show we can do it," and added, if they didn't meet the employees expectations the union would be there.

I find Wood's comments exceeded permissible generalized expressions. Wood noted the department was unstaffed and explained his first goal would be to fully staff the department. Simply stated Wood clearly made a promise to remedy a specific problem which was understaffing. Wood pointed out to the employees that other specific changes had recently been made, namely, that he had been moved into the department as the new supervisor. He indicated he felt he could do an adequate job of carrying out other changes as well. Wood's comments, along with specific chances noted or promised, violated Section 8(a)(1) of the Act as promises to resolve employee problems if they abandoned their pursuit of union representation.

E. Young's Accelerated Departure

1. Complaint allegation

It is alleged at paragraph 6 of the complaint the Company, on or about May 27, 2007, accelerated the termination of employee Heidi Young, who had given notice of her intent to resign her employment effective on June 6, 2007, because she engaged in activities on behalf of the Union and to discourage employees from engaging in those activities and to prevent Young from voting in an upcoming election for May 31, 2007, in Case 18–RC–17500. It is alleged the Company's actions violate Section 8(a)(1) and (3) of the Act.

a. The Government's evidence regarding Young's departure

Young, who holds a Masters Degree in Forensic Science, did some of her undergraduate studies at a local college in Sioux City, Iowa. While pursuing her studies Young worked at the Company as a paid intern for 3 months each summer during 2003, 2004, and 2005. Each of those summers Young worked in the Quality Assurance/Quality Control Laboratory (laboratory department or laboratory) where she was supervised the first summer by Jeff Abell, the second summer by Ron Peter and the third summer by Michael Belkin. The laboratory manager during most of that time was Carol Ostendorf. (Manager Ostendorf or Ostendorf).

In April 2007, Young made application for full time employment with the Company and was interviewed and hired by QA/QC Manager Ostendorf. Young explained during the interview that if job opportunities came about for something forensically related she would accept such an offer. In fact Young told Ostendorf during her interview she actually had a job interview scheduled in her field of expertise.

Young's first day of full-time employment with the Company was April 9, 2007. On or about April 25, 2007, Young was offered and accepted employment with the Wisconsin State Crime Laboratory as a DNA Analyst in Madison, Wisconsin. Young applied with the Wisconsin State Crime Laboratory before she started full time employment with the Company. Young opined the job in Wisconsin better suited her job skills.

On about April 26, 2007, Young notified QA/QC Manager Ostendorf of her acceptance of employment elsewhere and advised Ostendorf her last day of employment with the Company would be June 6, 2007. Young testified Ostendorf at first seemed "flustered" saying "no, you cannot leave" but made no comment about her proposed June 6, departure date. Young testified in fact no one in management, between late April and May 23, 2007, mentioned her proposed departure date of June 6.

During her tenure at the Company, Young served as a laboratory technician in the microbiology section of the Quality Assurance Quality Control Department where she performed tests to ensure bacteria was not present or growing in the gelatin produced by the Company. Of the 12 employees in the laboratory, Young was a friend of co-laboratory technician McCaslen prior to working at the Company and became a friend of laboratory technician Claassen at work. The three technicians ate together and took breaks together. Young testified they discussed work complaints two or three times per week and that Supervisor Peter had been present in the area when they had some of their work related discussions.

Young testified she and McCaslen were working together on May 23, 2007, but she [Young] was "very frustrated" doing her job that day. Young explained her frustration resulted from the fact a co-worker, Trish Peterson, "just kept following [her] around like [she] didn't know how to do stuff." While still frustrated someone, and Young wasn't sure who at the time, asked how her day was going. Young responded, "I can't wait to get out of here." Young was so "flustered" she did not even see who asked the question but later learned it was Consultant Dellinger. Young did not hear Dellinger make any response and she could not recall using any profanity in the exchange. Young acknowledged, however, it was possible she said "hell" that she was "frustrated." Young went on to acknowledge "when I'm mad, I . . . tend to use profanity."

Laboratory technician McCaslen testified about the occasion when Young had "an alleged outburst" in the laboratory. McCaslen testified Young had just returned from a bathroom break "pretty upset because of a confrontation she had had with a fellow co-worker, Trish Peterson." McCaslen tried to calm Young down "a little bit" when Consultant Dellinger came into the area and asked how it was going. McCaslen said she was

too busy to respond but that Young replied "I can't wait to get out of here." Dellinger responded "well that's too bad" and left.

Coworker Claassen testified Young said "I'm so frustrated, I can't wait to get out of this place." Claassen first testified no profanity was used but on cross-examination said she could not recall if an obscenity was used but that Young could have.

Later that same day [May 23] Consultant Dellinger came back to the laboratory and asked Young to accompany her to Supervisor Wood's office. Those present in Wood's office were Wood, Young and Dellinger. Young testified Dellinger said "[w]e are going to accommodate your needs, and your last day will be May 27th." Young asked why, and asked if it was because the Company did not want her to vote. According to Young, Dellinger responded only with "O." Young told them she was not stupid and told Consultant Dellinger she was "screwing her/lab employees over" and the Company "didn't care about their employees whatsoever." Young said a "lot" more but could not recall what else she said. Young did request to speak with Supervisor Wood alone. Dellinger left to see if a check had been cut for Young. Young told Wood she was sorry and Wood said he did not know what was going on and had no control over it.

McCaslen testified she was kind of nosey and watched as Young went to Wood's office and as Young returned from the office. McCaslen said Young was "beet red and crying" and they then discussed what had taken place.

At about mid-afternoon that same day Young asked Supervisor Wood if she should show for work on May 28, 2007, if she had not heard anything by the end of her current work shift. However, at approximately 4 p.m. that afternoon Young was given a hand delivered letter from Consultant Dellinger that stated:

As discussed, we have accepted your resignation as tendered. Your last day at GELITA USA will be May 27, 2007. You will be paid through June 6, 2007. Included with your last check will be any accrued unused vacation.

When Young read the letter she became "very upset" and asked Supervisor Wood "to get Kim Dellinger down here so I could talk to her and Desiree McCaslen would be present with me in this meeting." When Consultant Dellinger arrived Young told her "this letter is a lie." Dellinger asked how and Young told her she did not accept resignation on May 27 that she was being forced into that date. Young told Dellinger she had never been so "disrespected" by a human resources department.

McCaslen testified she was present as Young "pleaded her case" with Wood and Dellinger, and, when Young expressed her desire to work until June 6 because she did not want to sit at home. According to McCaslen, Supervisor Wood and Consultant Dellinger, both explained to Young that most companies paid employees off when they gave notice but that was their last day at work. McCaslen told them she had been there five years and had never seen it done that way. Young asked if she would have to work that Saturday and Sunday and was told she would unless she could get someone to cover for her.

McCaslen testified she was one of the "biggest complainers" in the laboratory department because she "always felt overworked or underappreciated." McCaslen said she complained on a daily basis to Supervisor Peter but was never disciplined for doing so. McCaslen explained, for example, that when Supervisor Peter gave out pay checks each Friday she always said, "Oh, please tell me that's my pink slip." McCaslen said Peter thought her comments to be a joke "and between us it kind of was." She also said when Supervisor Peter would ask how things were going she would say, "I think I'm going to quit right now and you can finish this for me." Nothing was ever done to McCaslen for her comments.

b. The Company's evidence regarding Young's departure

Consultant Dellinger testified she did not know Young personally but only as an employee of the Company who started full time with the Company April 9, 2007. Dellinger was on vacation when Young submitted her resignation with her proposed departure date of June 6, 2007. After returning from vacation Dellinger talked with Young about her newly accepted position in Madison and stated Young "was very excited about it" "that it was in forensics which is what she wanted to do and what she had studied." Dellinger said after Young submitted her resignation she continued to work at her same duties, shift, position and pay.

Dellinger spoke with Young in the laboratory on May 23, 2007, and noted employee McCaslen also was in the area. Dellinger initiated the conversation by asking how things were going. According to Dellinger, Young responded that "she couldn't wait to get the hell out of here." Dellinger said she recalled Young's exact words because Young "was very frustrated . . . you could tell in her face and in her actions, I mean, that she was frustrated and upset." Dellinger was "taken aback" by Young's comments.

After the encounter in the laboratory department Dellinger telephoned Vice President Tolsma and also spoke with Director Mayberry about Young's comments. Dellinger said she spoke with her superiors because Young's "frustration and . . . wanting to get away from there made [her] very concerned." Dellinger also said she talked with her superiors because it was no secret that at the time they were "going through a union campaign" but that she "felt strongly that it was time to let Heidi [Young] go with the—with the attitude that she had displayed to me." Dellinger explained that work performed by the laboratory technicians is very important to the Company because "[e]verything that goes out to our customers has to go through the laboratory to be tested." Dellinger said the decision was a difficult one regarding whether to have Young leave earlier than requested "because we didn't want it to be for any reason other than it was the right thing to do for the employee and for the Company."

Dellinger said Tolsma and Mayberry were not generally involved in every disciplinary decision but this was one she did not wish to make on her own. The managers' final decision was to accelerate Young's resignation date, but to ensure she was treated fairly, the Company would pay Young through her requested June 6, 2007 date. Dellinger explained that when an employee was very frustrated and upset "[i]t just has a ripple effect out to all of the other people that you work with."

Dellinger said she wrote Young on May 24, 2007, at Young's request, accepting her resignation.

Dellinger testified she never at any time observed Young wearing Union buttons, pins, hats or anything that would indicate her support for the Union nor did Young ever tell her she favored the Union.

Vice President Tolsma testified he was in Germany at the time of the events surrounding Young but was telephoned by Dellinger and given an overall summary of the situation. Tolsma was apprised of Young's short tenure with the Company, that she had obtained employment elsewhere in her field of study and that she wanted "to get the hell out of here." Tolsma agreed with Dellinger's recommendation to accelerate Young's departure date saying; "Fine, given the situation, you know, we can accommodate that."

Tolsma said it was not common practice, but the Company had, on occasion, accelerated the termination of other employees. Tolsma explained that about three years ago former Director of Information Technology, Joan Pyer, told him and her immediate supervisor, she could not work a certain way and he told her she was resigning with that being her last day. Tolsma said that when Vice President of Production, Carl Sitzman, resigned in January or February 2007, he granted Sitzman's request to leave his employment early. Tolsma also testified about a situation that happened 4 or 5 years earlier involving Environmental Engineer James Haigh, who at the time was on a performance improvement plan. Tolsma said Haigh told him he could not work for his superior because his supervisor was not an engineer. Tolsma said he simply told Haigh "we'll accept your resignation, and your last day is today."

2. Discussion and conclusions

The Government contends the Company accelerated the termination date for Young, a valued employee with a strong work ethic, because of her concerted protected activity of making a statement to management that evinced prounion voting intentions, and to have her off the Company's payroll and not eligible to vote in the Board conducted election for the laboratory employees.

The Company contends Young's final day of work was accelerated not because of any union or concerted activity but simply because of her statement to a management official that she could not wait to get the hell out of the Company. The Company asserts it was only as a direct result of Young's desire to leave as soon as possible that it elected to permit Young to do just that and was not based on animus towards the Union.

Before examining this case under the Board's dual motivation test or analysis, it is helpful to determine exactly what Young said when she announced she could not wait to leave her employment with the Company. I find Young said, "I can't wait to get the hell out of here" when asked by Consultant Dellinger on May 23, 2007, how her day was going. I am not unmindful that Young, McCaslen, and Claassen all could not recall Young using any profanity. However, Young said it was possible she said "hell" that she was "frustrated" and acknowledged that when she was "mad" she tended to use profanity. McCaslen said Young was "pretty upset" that morning because Young had a "confrontation" with a "coworker" and she, McCaslen, was trying to calm Young down "a little bit." Although Claassen could not recall if Young used profanity she acknowledged Young could have. The evidence establishes and Young's demeanor on the witness stand reinforces, a finding that Young was at times frustrated, upset, angry and in need of being calmed down a bit at work. When Young was upset, which appears to have been often, she admittedly used profanity. I am fully persuaded she used the word "hell" when she said she could not wait to get out of the Company. I turn now to the dual motive analysis.

To establish a violation of Section 8(a)(3) of the Act, the government must prove, by a preponderance of the evidence, that an individual's protected activity was a motivating factor in the employer's action. *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Once the government makes this showing, the burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even in the absence of the protected conduct. To sustain its burden the government must show that the employee was engaged in protected activity, that the employer was aware of that activity, that the activity or the employee's union affiliation was a substantial or motivating reason for the employer's action, and, there was a causal connection between the employer's animus and its challenged conduct or decision. The government may meet its *Wright Line,* supra, burden with evidence short of direct evidence of motivation, i.e., inferential evidence arising from a variety of circumstances such as union animus, timing or pretext may sustain the government's burden. Furthermore, it may be found that where an employer's proffered non-discriminatory motivational explanation is false, even in the absence of direct evidence of motivation, the trier of fact may infer unlawful motivation. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Fluor Daniel*, *Inc.*, 304 NLRB 970 (1991). Motivation of union animus may be inferred from the record as a whole, where an employer's proffered explanation is implausible or a combination of factors circumstantially support such inference. *Union Tribune Co. v. NLRB*, 1 F.3d 486, 490–492 (7th Cir. 1993). Direct evidence of union animus is not required to support such inference. *NLRB v. 50-White Freight Lines, Inc.,* 969 F.2d 401 (7th Cir. 1992). If it is found an employer's actions are pretextual, that is, either false or not relied upon, the employer fails by definition to show it would have taken the same action in the absence of the protected conduct and it is unnecessary to perform the second part of the *Wright Line* analysis. *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982), *Metropolitan Transportation Services*, 351 NLRB No. 43, slip op. at 3 (2007).

The first burden the Government must meet is to establish Young engaged in protected activity. Young, McCaslen and Claassen talked two or three times per week about work related complaints sometimes in the presence of Supervisor Peter. McCaslen contacted the Union setting in action the events which led to the Board conducted election. Consultant Dellinger interrogated Young and Claassen about whether they had made their minds up about this "stuff" leading Young to respond she was not going to be there so it did not matter to

her. This "stuff," as more fully described elsewhere herein, referred to the Union campaign and election. Dellinger did not leave Young's response alone but reminded Young she had friends there and should care about them. Young obliged Dellinger telling her she would vote however her friends wanted her to vote. Young's friends included McCaslen, thus leading Consultant Dellinger to conclude Young would support unionization in keeping with the desires of her friends. It was well known McCaslen supported the Union. McCaslen testified, for example, she had met with Dellinger many times regarding work related issues in the laboratory. McCaslen said she and Consultant Dellinger had a "good open relationship" and that they "talked frequently." McCaslen recalled that Dellinger told her in late May 2007, in the laboratory that she was "worried" "that you will end up with less after negotiations than you have now." Thus not only did Young engage in protected activities but the Company knew of them, in part, from Dellinger's unlawful interrogation of Young and by Young's association with others Dellinger knew to support the Union.

Young's termination date was accelerated one day after she was unlawfully interrogated by Dellinger revealing her pro-Union inclinations. Specifically the Company raised no objection to Young's proposed June 6, 2007, departure date from the time she announced her resignation on April 26, 2007, until one day after Dellinger unlawfully interrogated her on May 22, 2007, at which time Young revealed her apparent support for the Union.

The Company's contention Young's comment "she couldn't wait to get the hell out of here" brought about her accelerated departure as an accommodation to her, and for no other reason, does not withstand examination. The Company seized upon Young's comment, as a pretext, to accelerate her departure date so as to make Young ineligible to vote in the Board conducted election. First, others complained about working conditions but had no action taken against them for doing so. Laboratory employee McCaslen admitted she was one of the "biggest complainers" in the laboratory department complaining daily as "overworked or under appreciated," but was never disciplined for her complaints. McCaslen told Supervisor Peter, on occasions when he handed out payroll checks, to please tell her it was her pink slip and in response to his inquiries about how things were going she would tell him she was going to quit and he could finish her work. Peter, as her laboratory supervisor, took no action against McCaslen for her statements of dissatisfaction, yet the Company seized upon Young's one flare-up and accelerated her departure date. I note the Company had no policy regarding profanity in the work place on which it might attempt to justify its offense at Young's use of the term "hell" in her comments.

The Company had no established past practice of accelerating resigning employees' proposed departure dates. Vice President Tolsma testified it was *not* a common practice to accelerate dates but nevertheless gave three examples where departure dates were accelerated. One example was of a former Director of Information Technology who stated she could not work a certain way and was told by Tolsma she was resigning immediately. The person was a management official not a laboratory employee and she was in essence fired by being told she was resigning immediately. The second example involved a Vice President of Production who specifically requested an accelerated departure date. The third example involved an environmental engineer, who was on a performance improvement plan, who told Tolsma he could not work for his assigned supervisor, because the supervisor was not an engineer. Tolsma accepted his resignation that day. These are not analogous to Young's situation nor do they offer any justification for the Company's actions against Young rather it simply highlights the pretextual nature of the Company's acceleration of Young's departure date.

The pretextural nature of the Company's actions toward Young is further demonstrated by the fact Consultant Dellinger had discussions with the highest levels of management, even those outside the country, but failed to consult with or provide early notice to Young's immediate Supervisor, Wood. Dellinger acknowledged that Vice President Tolsma and Director Mayberry were not generally involved in disciplinary decisions but she "felt strongly that it was time to let Heidi [Young] go with . . . the attitude that she displayed to me" and she said it was no secret about the Company "going through a union campaign." It appears quite clear Dellinger knew she was not following past practice involving this highly educated laboratory employee but also knew it was time to remove Young from the payroll in light of the upcoming union election.

Further evidence of the pretextural nature of the Company's actions is demonstrated by Dellinger's stated concern that Young's frustrated and upsetting comments would send "a ripple effect out to all of the people" she worked with. I note after Young had been told of her accelerated departure date she was asked to work, unsupervised, for two additional workdays. If the Company truly was concerned that Young's continued presence in the laboratory would be detrimental to the workforce it would not have insisted she work additional days or, if not, find on her own a replacement for herself those additional workdays. The laboratory was understaffed at the time.

I find the Company accelerated Young's departure date for unlawfully motivated reasons violating Section 8(a)(3) of the Act. The Government's prima facie *case* has not been rebutted, as the reasons advanced by the Company are pretextual.

CONCLUSIONS OF LAW

1. By, since on or about May 2007, interrogating its employees about their union activities and support for the Union; promising employees to resolve any problems employees had with their current working conditions if they abandoned their pursuit of union representation; and, threatening employees they would receive no job protection if they engaged in economic strikes on behalf of the Union, should employees select the Union to represent them, the Company violated Section 8(a)(1) of the Act. By on May 27, 2007, accelerating the termination of employee Heidi Young, who had given notice of her intent to resign her employment with the Company on June 6, 2007, the Company violated Section 8(a)(3) and (1) of the Act.

2. In as much as these unfair labor practice violations are coextensive with the Union's Objections to the election, the Objections are sustained and the election should be set aside.

3. The ballot of Heidi Young should be opened and counted. A new tally of ballots should be prepared and, depending on the outcome of the election, an appropriate certification should issue. If the outcome shows that a majority of the valid votes counted is in favor of union representation the Union would obviously withdraw its objections in favor of a certification of representative. On the other hand, if the revised tally shows that a majority of the valid votes counted was against unionization, a new election should be conducted based on the Union's Objections.

REMEDY

Having found the Company has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Although the Company discriminatorily accelerated the termination date of its employee Heidi Young from June 6 to May 27, 2007, I shall not recommend that she be made whole or reinstated because she was paid through her voluntary resignation date and voluntarily left the Company for other sought after employment. I do, however, recommend the Company be ordered, within 14 days of the Board's Order, to remove from its files any reference to the unlawful acceleration of Young's departure date, and, within 3 days thereafter, notify her in writing it has done so. I also recommend the Company be ordered, within 14 days after service by the Region, to post an appropriate "Notice to Employees" in order that employees may be apprised of their rights under the Act and the Company's obligation to remedy its unfair labor practices.

With respect to the Representation case, I recommend that a revised tally of ballots be issued after counting the ballot to be opened. In the event that a majority of the votes are for the Union, it is recommended that a Certification of Representative be issued. In the event, however, that a majority is cast against union representation, it is recommended that a new election be held.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Company, Gelita USA Inc., Sergeant Bluff, Iowa, it officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees about their union activities and support for the Union; promising employees to resolve any problems employees had with their current working conditions if they abandoned their pursuit of union representation; and, threatening employees they would receive no job protection if they engaged in economic strikes on behalf of the Union, should employees select the Union to represent them.

(b) Accelerating the termination date for employees because they engaged in union and/or other protected activities and to prevent them from voting in a scheduled Board conducted representation election.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the Board's Order, remove from its files any reference to its acceleration of Heidi Young's departure date from the Company, and, within 3 days thereafter, notify her in writing that this has been done and that such will not be used against her in any manner.

(b) Within 14 days after service by the Regional Director of Region 18 of the National Labor Relations Board, post at its Sergeant Bluff, Iowa, facility copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 18 after being signed by the Company's authorized representative shall be posted by the Company and maintained for 60 consecutive days in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced or covered by any other material. In the event that during the pendency of these proceedings the Company has gone out of business or closed the facilities involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice to employees, to all employees employed by the Company on or at any time since May 22, 2007.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 18 of the National Labor Relations Board sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Company has taken to comply.

IT IS FURTHER ORDERED that the proceeding in Case 18–RC–17500 be severed and remanded to the Regional Director for Region 18 for further action consistent with this decision.

Dated, Washington, D.C. December 21, 2007

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate our employees about their union activities and/or support for United Food and Commercial Workers Union, Local 1142 or any other labor organization.

WE WILL NOT promise our employees we would be able to resolve any problems employees had with their current working conditions if they abandoned their pursuit of union representation.

WE WILL NOT threaten our employees that they would receive no job protection if they engaged in economic strikes on behalf of the Union, should employees select the Union to represent them.

WE WILL NOT accelerate the termination date of employees, who have tendered their resignations, because of their union or concerted protected activities or to prevent them from voting in a Board conducted election.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days of the Board's Order, remove from our files any reference to our acceleration of Heidi Young's departure date from our Company and, WE WILL, within 3 days thereafter, notify her in writing that this has been done and that her accelerated departure will not be used against her in any manner.

GELITA USA INC.